


FILED
JUL 01 2008

CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

MANUEL C. VILLALUZ,

CIV08-4088

Petitioner,

-vs-

ORDER RE: RESPONSE

ARCHIE B. LONGLEY, Warden,
Yankton Prison Camp,

Respondent.

Petitioner, Manuel Villaluz, an inmate at the Federal Prison Camp in Yankton, South Dakota, has petitioned this Court for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner relies on *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir.2008), in asserting that the Bureau of Prisons (BOP) has violated the Administrative Procedure Act by categorically excluding from early release for successful completion of residential substance abuse program prisoners, including Petitioner, who have been convicted of offenses involving possession, carrying, or use of firearms. The Ninth Circuit held in *Arrington* that the BOP has failed to set forth a valid rationale for its categorical exclusion rule and that Section 706 of the Administrative Procedure Act requires that the BOP set forth such a rationale. The holding of the Ninth Circuit has been rejected by the Eastern District of Arkansas¹ and is being considered elsewhere.² After reviewing the Petition and the applicable law,

IT IS ORDERED :

1. That the Clerk serve a copy of the Petition in this case upon the United States

¹See *Gatewood v. Outlaw*, 2008 WL 2002650 (E.D. Ark. May 8, 2008). The district court in the *Gatewood* case excused the petitioner's failure to exhaust his administrative remedies after determining that exhausting the administrative remedies would be futile.

²See, e.g., *Broadway v. Bledsoe*, 2008 WL 2439725 (S.D. Ill. June 13, 2008).

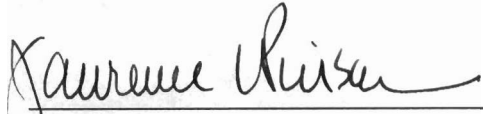
Attorney's Office for the District of South Dakota;

2. That a response to the above-referenced Petition be filed within 20 days after service of the Petition; and

3. that Petitioner shall, if he chooses, file a reply within 10 days of Respondent's response.

Dated this 1st day of July, 2008.


BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

(SEAL) DEPUTY